

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-80013-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODRICK DOMINIQUE JONES,

Defendant.

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**ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

THIS CAUSE is before the Court upon Defendant's Motion to Suppress Physical and Testimonial Evidence and for an Evidentiary Hearing [DE 73]. The Court held a hearing on the motion at which evidence was presented. The Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED as follows:

**BACKGROUND.**

Defendant moves to suppress evidence obtained pursuant to a search warrant issued by a Federal Magistrate Judge on the basis of *Franks* errors. *Franks v. Delaware*, 438 U.S. 154 (1978). Defendant also seeks to suppress other evidence obtained as a result of the allegedly tainted evidence seized pursuant to the challenged warrant. Defendant asserts that the affidavit submitted by law enforcement to obtain the search warrant was based on false or misleading information, or omitted material facts. As a result, Defendant asserts when the Court excises the false and misleading information from the affidavit, in conjunction with considering the

material omissions, it results in a lack of probable cause for the issuance of the search warrant.

The United States opposes the motion and contends that the affidavit supporting the issuance of the warrant was not false or misleading, nor did it omit material facts. Even assuming there were some deficiencies in the affidavit, the government contends they do not rise to the level justifying suppression of the evidence obtained pursuant to the search warrant.

### **DISCUSSION.**

In order to prevail on his motion, Defendant must establish that the alleged misrepresentations or omissions were knowingly or recklessly made by the law enforcement officer seeking the warrant, and the result of excluding the alleged misrepresentations, and including the alleged omissions, would have been a lack of probable cause for the issuance of the warrant. *United States v. Novaton*, 271 F.3d 968, 986-87 (11<sup>th</sup> Cir. 2001). The *Franks* rule is limited to cases of perjurious or recklessly false statements or omissions made by a law enforcement officer in support of a warrant. The rule does not apply to negligent misrepresentations or omissions. *Kelly v. Curtis*, 21 F.3d 1544, 1554 (11<sup>th</sup> Cir. 1994). Upon a review of the application for the warrant, as well of the other evidence presented, the Court finds that Defendant has not made the requisite showing. Therefore, Defendant's motion must be denied.

#### **A. The Gold Vehicle.**

One of Defendant's principal attacks of the application for the warrant relates to the gold vehicle which was observed on surveillance videos obtained from businesses in the shopping plaza where the Chase Bank robbery took place on February 17, 2018. Upon entering the shopping plaza, the vehicle parked in what was described by law enforcement as "the very north

side of the plaza facing Cove Road.” Defendant’s Exhibit 1, ¶ 22. A witness to the robbery reported to law enforcement that after the robbery, the perpetrator walked in the direction where that vehicle had been parked. Based upon the time this vehicle entered and left the parking lot of this plaza in relation to the time of the robbery, the vehicle’s location in relation to the report of the witness and the observation of what appears to be the same vehicle taking a route behind the main businesses in the plaza, law enforcement targeted this vehicle as potentially being driven by the robber. Further investigation revealed that Defendant owned a vehicle which matched the one seen on the surveillance videos.

Defendant attacks law enforcement’s statements to the Magistrate Judge as they relate to this vehicle. Defendant also asserts that law enforcement omitted material information in the application for the warrant as it relates to this vehicle; and misled the Magistrate Judge by suggesting that the vehicle seen on the surveillance video traveling behind the stores was the same vehicle seen entering and exiting the parking lot of the plaza. The Court finds that the application was not deficient as it relates to this vehicle. The Court finds that the information Defendant asserts should have been provided to the Magistrate Judge in the application were not material omissions, nor would the inclusion of the allegedly omitted information have resulted in the absence of probable cause (e.g., the distance from the bank to the parked vehicle or the number of cars parked in the vicinity of the subject vehicle). While it is true that the law enforcement officer could not say, as a matter of fact, that the vehicle seen in the video of the parking lot was the same vehicle seen passing behind the businesses, upon a review of both videos, this Court concludes that they were, and the Court finds that the Magistrate Judge would have come to the same conclusion if presented with all of the information Defendant asserts

should have been provided. The likelihood of two vehicles of that same make, containing the same style rims, each containing a sticker in the rear passenger window, traveling in that same plaza in the same time frame, is remote. And even if the law enforcement officer overstated the matter in this regard, it certainly does not rise to the level of perjurious or reckless.

**B. The White Vehicle.**

Defendant also attacks the application for the search warrant as it relates to a white vehicle observed on video surveillance in the vicinity of the Chase Bank robbery which occurred on June 22, 2017. The application advised the Magistrate Judge that an employee of the bank observed the perpetrator of the robbery walk towards a funeral home. The funeral home was approximately a block north and on the other side of the street from the bank. The distance of the funeral home from the bank was not included in the application. An employee of the funeral home advised law enforcement that shortly after the time of the robbery, he observed a white sedan in the parking lot with a Florida license plate. The employee stated the first three digits of the license plate were W37, but the application stated the license plate contained the characters W37. Defendant's license plate did not begin with W37, and only contained the number 7 as the second digit and the letter "W" as the fifth of the six digits of his plate. Video surveillance showed a white sedan enter the parking lot of the funeral home shortly before the robbery and exiting the parking lot shortly after the robbery. The video showed a vehicle with distinct rims and a distinct white panel between the front and rear doors. The application also stated that surveillance showed "the subject" walking from the vehicle toward the bank and then from the direction of the bank to the vehicle after the robbery. Based on further investigation, law enforcement discovered that at the time of the robbery, Defendant had owned a vehicle

matching the description of the vehicle in the surveillance videos.

The Court finds that the information which Defendant asserts was omitted from the application relating to this vehicle was not material and would not have resulted in the absence of probable cause if it had been presented. The failure to advise the Magistrate Judge that 13 minutes elapsed between the vehicle's arrival in the parking lot of the funeral home and its departure was not a significant omission. Similarly, the omission of the distance of the bank from the funeral home, and the general description of the direction the robber went after the robbery were not misleading or materially deficient. Upon a review of the video surveillance, the Court concludes that the white vehicle seen there is more than likely the same vehicle which law enforcement found was previously owned by Defendant. Once again, the law enforcement officer may have overstated his conclusion that "the subject" was, in fact, the person whose legs can be seen in the surveillance video going out of and back into the parking lot. But in view of all the other circumstances, it was not an unreasonable conclusion. Similarly, while the description of the digits of the license plate of the car in the parking lot was not totally consistent with the description given by the witness, the witness only remembered two of the digits correctly and not in the correct order. The Magistrate Judge was provided with the correct plate number, and he was capable of assessing the weight to give to the inaccurate description of the license plate. Once again, to the extent these matters can be considered deficiencies in the application, they do not rise to the level of perjurious or reckless.

### **C. Physical Description of Defendant.**

Defendant also challenges the sufficiency of the description of him in the application for the warrant and the comparison of him to the perpetrator of the robberies. In particular, the

application stated that surveillance photographs of the perpetrator bore a strong resemblance to Defendant's Department of Motor Vehicle ("DMV") photograph, but failed to provide the DMV photograph to the Magistrate Judge for him to make the comparison and draw his own conclusion. Defendant also challenges the application's statement that the facial hair on Defendant's DMV photograph was consistent with the facial hair of the perpetrator seen on the surveillance photographs. The perpetrator of the February 25, 2016 robbery was described as having a "full light beard," but Defendant's DMV photograph shows him with a goatee and a mustache. Lastly, while some of the witnesses described the perpetrator of the robberies as being 5' 8" to 5' 9" and having a slender build, which is consistent with Defendant's height and weight, Defendant challenges the application's failure to advise the Magistrate Judge that other witnesses described the perpetrator as being 5' 6" to 5' 7" and 6' to 6' 3" and weighing 230 lbs.

Once again, the Court finds that the alleged inconsistencies and omissions were not material. Nor would the inclusion of the alleged material information that was omitted have resulted in the absence of probable cause. Furthermore, none of the alleged deficiencies can be said to be perjurious or reckless.

#### **D. The Baseball Caps.**


Investigative photographs of Defendant showed him in possession of some baseball caps similar to ones worn by the perpetrator during the robberies. Defendant asserts that the application that made reference to this fact failed to inform the Magistrate Judge of the rarity or commonality of the types of baseball caps that Defendant possessed, since it is not unusual for residents of south Florida to possess such hats. The Court does not find the omission of this type of data to be material or misleading. The Magistrate Judge could have used his common

knowledge of the fact that baseball caps of this type are commonly worn by residents of south Florida, and factored that into his probable cause analysis. The inclusion of that type of data would not have resulted in the absence of probable cause, and the failure to provide data of that kind was not perjurious or reckless.

**CONCLUSION.**

The information in the application for the search warrant was more than sufficient to establish probable cause for the issuance of the warrant. The manner in which the information was presented to the Magistrate Judge was not perjurious or reckless. Furthermore, even if the application had been adjusted as suggested by Defendant, it would not have eliminated probable cause. As a result, Defendant's Motion is DENIED.

DONE and ORDERED in West Palm Beach, Florida, this 27<sup>th</sup> day of September, 2019.

  
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KENNETH A. MARRA  
United States District Judge

Copies provided to:

All counsel